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Supreme Court of the United States.

OCTOBER TERM, 1967.

No. 1083.

CHARLES W. BARTLETT, TRUSTEE, ET AL.,
Petitioners,
v.
COMMONWEALTH OF MASSACHUSETTS,
Respondent.

CHARLES W. BARTLETT, TRUSTEE, ET AL.,
Petitioners,
v.
MASSACHUSETTS BAY TRANSPORTATION AUTHORITY,
Respondent.

BRIEF FOR RESPONDENT MASSACHUSETTS BAY TRANSPORTATION AUTHORITY IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI.

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The Case.

The case comes before this Court upon petition for writ of certiorari to the Court of Appeals for the First Circuit on the petition of Charles W. Bartlett, Trustee of the prop-

erty of the Boston and Providence Railroad Corporation, and Richard Joyce Smith and William J. Kirk, petitioners, as they are Trustees of the property of the New York, New Haven and Hartford Railroad Company. The petitioners seek to have the issuance of a writ of certiorari to review the judgment of the United States Court of Appeals for the First Circuit entered in the above actions on November 8, 1967.

Opinions Below.

The opinion and judgment of the United States District Court for the District of Massachusetts is reported in 266 F. Supp. 390.

The opinion of the Court of Appeals is reported in 384 F. 2d 219.

The Issue.

The single question now raised is whether the Commonwealth of Massachusetts or any of its political subdivisions must obtain prior approval of the United States District Court in Connecticut, sitting as a Court of Bankruptcy in railroad reorganization proceedings under Section 77 of the Bankruptcy Act (11 U.S.C. § 205), before taking by eminent domain a portion of the property of the railroad utilized in interstate commerce?

The Facts.

The facts are adequately stated in the petition for certiorari (pp. 10-14).

Argument.

Under Section 77 the Bankruptcy Court is not vested with the power to insist on its giving prior approval to a taking by eminent domain by a state or a political subdivision of a state.

The power that is asserted in this case is in effect the power to veto public improvements voted by the various State Legislatures.

This is an extraordinary power, in derogation of the rights of the states. If Congress had intended to confer such power on the Bankruptcy Court, it would doubtless have said so.

> "Therefore, in construing legislation this court has disfavored inroads by implication on state authority and resolutely confined restrictions upon the traditional power of states to regulate their local transportation to the plain mandate of Congress. . . ."
>
> *Palmer* v. *Massachusetts,* 308 U.S. 79, 84.

> "The fact that the reorganization court could in its discretion, [Section 77 of the Bankruptcy Act, 11 U.S.C.] § 205 (j), enjoin the commencement or prosecution of an action in the State court does not imply that the exclusive jurisdiction given to the Federal court over the debtor and its property was intended to imply a denial of jurisdiction in the State courts in proceedings that do not constitute an interference with the administration by the Federal court of the estate of the debtor."
>
> *Robinson* v. *Trustees of New York, New Haven & Hartford Railroad Co.,* 318 Mass. 121, 132, 133.

> "The power of eminent domain is an attribute of sovereignty, and inheres in every independent State. . . .

> The taking of private property for public use upon just compensation is so often necessary for the proper performance of governmental functions that the power is deemed to be essential to the life of the State. It cannot be surrendered, and if attempted to be contracted away, it may be resumed at will. . . . It is superior to property rights . . . and extends to all property within the jurisdiction of the State,—to lands already devoted to railway use, as well as to other lands within the State."
>
> *Georgia* v. *Chattanooga,* 264 U.S. 472, 480.

The respondent Massachusetts Bay Transportation Authority, is a "political subdivision" of the Commonwealth of Massachusetts.

> *Massachusetts Bay Transportation Authority* v. *Boston Safe Deposit & Trust Co.,* 348 Mass. 538, 540.

The respondent Massachusetts Bay Transportation Authority has been vested with the power of eminent domain.

> Massachusetts General Laws, c. 161A, § 3(*o*).
> Massachusetts General Laws, c. 79.
> Massachusetts Acts and Resolves, St. 1965, c. 684.

The respondent respectfully calls the Court's attention to Statute 1965, c. 684, of the Acts passed by the General Court of Massachusetts; in particular the first paragraph of said chapter 684, reading as follows:

> "The Massachusetts Bay Transportation Authority, hereinafter called the Authority, subject to the ap-

proval of the advisory board, established by section seven of chapter one hundred and sixty-one A of the General Laws, may construct and equip an extension of the existing Washington street tunnel in and through the cities of Boston, Somerville, Medford, Everett and Malden, consisting of a mass transportation facility partly in a subway or tunnel, partly on the surface, and partly elevated, extending in a northwesterly direction from Washington street tunnel near Haymarket square, under Accolon way between the North Station building and the North Station Industrial building, under the lands of the commonwealth under the existing bed of the Charles river, and through the Boston and Maine Railroad yards in the Charlestown area of the city of Boston, and thence along the western division of said railroad and land of the commonwealth, to a point near the former site of the state prison, *and may also construct and equip an addition to the Washington street tunnel in the city of Boston, consisting of a rapid transit line partly in subway, partly on the surface and partly elevated, extending from the Washington street tunnel along the right-of-way of the Boston and Albany Railroad and the New York, New Haven and Hartford Railroad in said city to the Forest Hills station on said line.*" (Emphasis supplied.)

The respondent also respectfully directs the attention of the Court to the second paragraph of chapter 684, and more particularly to the first sentence of said paragraph, reading as follows:

"*The Authority may, for the purposes of this act, use or take land of the commonwealth without compensation therefor, and may acquire, either by purchase or by eminent domain under chapter seventy-nine of the*

General Laws, such portion of the properties of said railroad and other properties in said cities where the mass transportation facility is to be built as the Authority may determine to be necessary for said mass transportation facility and its appurtenances.'' (Emphasis supplied.)

It is the contention of the respondent that the consent of the Bankruptcy Court is not a jurisdictional prerequisite to the taking by eminent domain of certain properties of the bankrupt railroads.

A fairly recent decision involved a condemnation suit filed by the United States to take land owned by the New York, New Haven & Hartford Railroad in the Town of Marlborough within the Commonwealth of Massachusetts. The Court in the course of its opinion said the following:

"The bankruptcy provisions relied upon were designed to protect the debtor from harassment pending reorganization and to give the reorganization court full grasp of all problems of the debtor so that they could be dealt with comprehensively. *But it seems clear that the exclusivity of its control is 'for the purposes (of the proceedings)' and its reach should not be construed beyond the needs which the court has power to fulfill.* . . . Admittedly the reach of the reorganization court's exclusive jurisdiction is sweeping, but it should be confined to its objectives and needs." (Emphasis supplied.)

United States v. *New York, New Haven & Hartford Railroad Co.*, 348 F. 2d 151, 152.

The respondent Massachusetts Bay Transportation Authority asserts that the "just compensation" required in

the above-cited Massachusetts General Laws, c. 79, applicable to the proposed takings prevents any undue burden or discrimination on interstate commerce.

> "There can be no question, however, that Congress did not give the bankruptcy court exclusive jurisdiction over all controversies that in some way affect the debtor's estate."
>
> *Callaway* v. *Benton,* 336 U.S. 132, 142.

> "Therefore, in construing legislation this court has disfavored inroads by implication on state authority and resolutely confined restrictions upon the traditional power of states to regulate their local transportation to the plain mandate of Congress. . . ."
>
> *Palmer* v. *Massachusetts,* 308 U.S. 79, 84.

It is the contention of the Massachusetts Bay Transportation Authority that the provisions of 11 U.S.C. § 205, granting "exclusive jurisdiction of the debtor and its property," do not, in effect, vest the Federal Bankrutcy Courts with the veto power over the proposed action of the respondents taken in order to promote the welfare of the inhabitants of the Commonwealth of Massachusetts.

United States v. *New York, New Haven & Hartford Railroad Co.,* 348 F. 2d 151.

The petitioners do not in any way claim that the provisions of Massachusetts General Laws with regard to the compensation recoverable are not adequate and that the procedural safeguards of Massachusetts General Laws, c. 79, do not satisfy constitutional requirements of due process.

To a certain extent the petitioners are urging that the various states are powerless to carry out the mandates of the respective Legislatures in the fields of public safety and welfare if at any point the plans conflict with operations of railroads then engaged in reorganization proceedings.

United States v. *New York, New Haven & Hartford Railroad Co.*, 348 F. 2d 151.

Conclusion.

The respondent Massachusetts Bay Transportation Authority respectfully urges that prior approval of the Federal Bankruptcy Court is not a jurisdictional prerequisite to the proposed takings, and that the proposed takings are within the authority of the Commonwealth of Massachusetts and its political subdivisions.

For the reasons set forth above, the petition for a writ of certiorari should be denied.

Respectfully submitted,

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Massachusetts Bay Transportation Authority.